

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

NEW ENGLAND CARPENTERS HEALTH
BENEFITS FUND, PIRELLI ARMSTRONG
RETIREE MEDICAL BENEFITS TRUST,
TEAMSTERS HEALTH & WELFARE FUND
OF PHILADELPHIA AND VICINITY,
PHILADELPHIA FEDERATION OF
TEACHERS HEALTH AND WELFARE FUND,
DISTRICT COUNCIL 37, AFSCME - HEALTH
& SECURITY PLAN; JUNE SWAN;
MAUREEN COWIE and BERNARD GORTER,

Plaintiffs,

v.

FIRST DATABANK, INC., a Missouri
corporation, and McKESSON CORPORATION,
a Delaware corporation,

Defendants.

Civil Action: 1:05-CV-11148-PBS

Judge Patti B. Saris

**DEFENDANT MCKESSON CORPORATION'S EMERGENCY MOTION TO
STRIKE PLAINTIFFS' SUPPLEMENT TO THE CLASS CERTIFICATION
RECORD, OR IN THE ALTERNATIVE, MOTION FOR LEAVE TO FILE A
RESPONSIVE BRIEF**

At the May 22, 2007 class hearing, this Court invited the parties to file supplements of evidence with no more than a three-page explanation of this evidence. (See attached Exhibit A, Hearing Tr. 64:10-11, May 22, 2007) (“[j]ust the documents and what issue it goes to, three pages, not like a whole new thing”). The Court clearly

instructed that the parties could file this short supplement, but “not another brief.” (*Id.* 64:8.) Plaintiffs are well aware of the Court’s explicit instructions. On July 9, 2007, plaintiffs filed a response to McKesson’s first supplement of the class certification record and acknowledged that “[t]he Court clearly limited each party to a single supplement of no more than three pages” (Pls.’ Response to McKesson’s First Supplement at 1.) Nonetheless, in direct violation of the Court’s instructions, on July 26, 2007, plaintiffs filed a whole new 16-page long brief. This unauthorized filing, styled as “Plaintiffs’ Supplement to the Class Certification Record,” extends far beyond the limited, three-page submission authorized by the Court and should be stricken.¹

In the alternative, if the Court declines to strike plaintiffs’ unauthorized filing, McKesson respectfully requests leave to file a responsive brief, not to exceed 15 pages. McKesson styles this motion as an emergency motion so that if the Court declines to strike plaintiffs’ unauthorized brief, McKesson can file a timely response.

Respectfully submitted,

McKesson Corporation
By its attorneys:

/s/ Lori A. Schechter
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Dated: July 26, 2007

¹ Plaintiffs’ July 26, 2007 submission constitutes plaintiffs’ second supplement to the class certification record as plaintiffs filed their first supplement, plaintiffs’ Notice of Filing Third Party Document, on May 23, 2007. McKesson, however, does not object to plaintiffs’ submission of their July 26, 2007 Declaration of Steve W. Berman in Support of Plaintiffs’ Supplement to the Class Certification Record as this submission (excluding exhibits) comes within the three-page limit imposed by the Court.

CERTIFICATION PURSUANT TO LOCAL RULE 7.1

I, Lori Schechter, counsel of record for defendant McKesson Corporation, hereby certify that McKesson's counsel conferred with counsel for plaintiffs in an effort to resolve the issue referred to in this motion, and that the parties were unable to reach agreement with respect to this motion.

/s/ Lori A. Schechter

Lori A. Schechter

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party through the Court's electronic filing service on July 26, 2007.

/s/ Lori A. Schechter

Lori A. Schechter

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

NEW ENGLAND CARPENTERS HEALTH)	
BENEFITS FUND, et al,)	
)	
Plaintiffs)	
)	
-VS-)	CA No. 05-11148-PBS
)	Pages 1 - 65
FIRST DATABANK, INC.,)	
a Missouri Corporation;)	
and McKESSON CORPORATION,)	
a Delaware Corporation,)	
)	
Defendants)	

MOTION/STATUS HEARING

BEFORE THE HONORABLE PATTI B. SARIS
UNITED STATES DISTRICT JUDGE

United States District Court
1 Courthouse Way, Courtroom 19
Boston, Massachusetts
May 22, 2007, 2:05 p.m.

LEE A. MARZILLI
OFFICIAL COURT REPORTER
United States District Court
1 Courthouse Way, Room 3205
Boston, MA 02210
(617)345-6787

1 this record, so if we issue a decision beforehand, we do.
2 And if some new information came in that bears on this, I
3 suppose what you should do is a motion to supplement the
4 class certification record. It may be like a three-page
5 brief on why it matters.

6 MS. SCHECHTER: Okay, and at a minimum, we'd like
7 to put in the slides that we put in today, so we'll do that.

8 THE COURT: Yes, just not another brief.

9 MS. SCHECHTER: I understand. Just the documents.

10 THE COURT: Just the documents and what issue it
11 goes to, three pages, not like a whole new thing. I'd give
12 you the chance to do it too if you -- do you have more
13 depositions?

14 MR. BERMAN: Yes, we do, your Honor. I mean, we're
15 attending the same depositions, and we're going to be trying
16 to get the evidence in our favor just like they are.

17 THE COURT: So I'm just trying to figure out. As a
18 logistical matter, it's a very serious motion for class cert,
19 and it takes me a while, and I have a few other things I need
20 to write. So I think it makes sense that at least until I've
21 written it, you should be supplementing if something is
22 relevant, but not with a slew of new briefs, okay? What I'm
23 hoping to do is get this out by the end of the summer.
24 That's sort of my ideal time period.

25 MR. BERMAN: You think so?

C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS) ss.
CITY OF BOSTON)

I, Lee A. Marzilli, Official Federal Court
Reporter, do hereby certify that the foregoing transcript,
Pages 1 through 65 inclusive, was recorded by me
stenographically at the time and place aforesaid in Civil
Action No. 05-11148-PBS, New England Carpenters Health
Benefits Fund V. First Databank, Inc., et al, and thereafter
by me reduced to typewriting and is a true and accurate
record of the proceedings.

In witness whereof I have hereunto set my hand this
24th day of May, 2007.

LEE A. MARZILLI, CRR
OFFICIAL FEDERAL COURT REPORTER